HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

and

HON'BLE SHRI JUSTICE G.BHAVANI PRASAD

W.A.NO.239 OF 2006

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Between:

The Fishermen Cooperative Society,

Kakani village, Narasaraopet Mandal,

Guntur District rep by its President T.Gurumurthy

..... Appellant

AND

Harijan Fishermen Mutually Aided

Cooperative Society Limited,

Kakani, Rep by its President Chellagunda

Anjaiah, S/o.Nagaiah, Narasaraopet, Guntur

and 3 others.

.....Respondents

::JUDGMENT::

Counsel for the Appellant : Sri B.Sairam Goud

Counsel for Respondent No. 1 : Sri P.Govinda Reddy

Counsel for Respondent Nos. 2 to 4 : Government Pleader for Fisheries

Dated 23/3/2006

Per Sri G.S.Singhvi, CJ

This appeal is directed against order dated 5.12.2005 passed by the learned Single Judge vide which the writ petition filed by respondent No.1 was allowed and a direction was given to the official respondents to consider the claim of the writ petitioner at par with the other societies registered under the Andhra Pradesh Cooperative Societies Act, 1964 for grant of fishing right in Kakani Major Irrigation Tank.

Respondent No.1, which was registered as a society under the Andhra Pradesh Mutually Aided Co-operative Societies Act, 1995, filed the writ petition under Article 226 of the Constitution of India for issuance of a mandamus to the official respondents to consider its claim for grant of fishing lease in Kakani Major Irrigation

Tank situated in Kakani village, Narasaraopet Mandal, Guntur District.

In the affidavit filed by Sri Chellagunda Anjaiah, President of respondent No.1, it was averred that even though in the past Fisheries Department had accepted its status as a society engaged in fishing, they had arbitrarily refused to consider its claim for grant of fishing rights in Kakani Major Irrigation Tank, and this has resulted in violation of Article 14 of the Constitution of India.

In the counter affidavit filed on behalf of the official respondents and also by respondent No.4, it was averred that fishing rights were leased out to respondent No.4 because its members belong to weaker sections of the society, whereas the writ petitioner consists of voluntary self-financing autonomous bodies formed with the members of all castes including forward castes.

On a consideration of the pleadings of the parties and arguments of their Advocates, the learned Single Judge allowed the writ petition and directed respondent No.2 – Assistant Director of Fisheries, Guntur to consider the claim of the writ petitioner at par with other societies registered under the Andhra Pradesh Co-operative Societies Act, 1964. The reasons assigned by the learned Single Judge for entertaining the claim of the writ petitioner (respondent No.1) read as under:-

“Then the question that remains for consideration is whether the petitioner-Society is not entitled for grant of lease of fishery rights in respect of the Tank in question on the ground that it is a Society registered under the 1995 Act.

Section 19 of the Co-operative Societies Act, 1964 which provides eligibility for membership of the Societies, runs as under:

> “**19. Eligibility for membership:-** (1) Subject to the provisions of Section 21,-
>
> a. an individual who attained majority and is of sound mind and who belongs to a class of persons, if any, for whom the society is formed as per its bye-laws and who possesses such qualifications as may be specified in the bye-laws or as may be prescribed for the concerned class of societies in the interest of co-operative movement.
>
> b. a society registered, or deemed to be registered, (under this Act or the Andhra Pradesh Mutually Aided Co-operative Societies Act, 1995 and which belongs to the class of societies, if any, for which the society is formed as per its bye-laws.
>
> Provided that the Co-operative Society registered under the Andhra

Pradesh Mutually Aided Co-operative Societies Act, 1995, which were admitted into Central, Apex level Co-operative societies, shall not be entitled for voting rights.

c. xx xx xx xxxxxxx

Explanation (1) :-

xx xx xx xx

Explanation II:-

For removal of any doubts, it is hereby declared that the Mutually Aided Co-operative Society registered or deemed to be registered under the Andhra Pradesh Mutually Aided Co-operative Societies Act, 1995 shall be entitled to all the rights and privileges of a member of a society except voting rights under the provisions of this Act on admission as such member."

From a bare reading of the above provision, particularly the first proviso to sub-section (1) of Section 19, it is clear that the members of the Co-operative Societies registered under the 1995 Act, are denied only voting rights. The Explanation-II further makes it clear that a Mutually Aided Co-operative Society registered or deemed to be registered under the 1995 Act shall be entitled to all the rights and privileges of a member of a Society, except voting rights under the provisions of this Act.

The learned counsel for the respondents could not dispute the above legal position. No other statutory provision, which would disentitle the Societies registered under the 1995 Act to obtain the lease of fishery rights has been placed before this Court by the learned Government Pleader. On the other hand, the learned counsel for the petitioner while placing reliance upon a decision of a Division Bench in **Vaddavalli Fishermen Co-operative Society Ltd., v. R.Krishna Kumar** 2000 (4) ALD 259, submits that no such distinction can be drawn between a society registered under the A.P. Co-operative Societies Act, 1964 and 1995 Act, so far as grant of fishery rights in respect of Major Irrigation Tanks which are vested with the Government are concerned. In the said decision, the Division Bench, while dealing with an identical question, held that the Society registered under the 1995 Act is also at liberty to participate in the public auction and that the rights of the 6th respondent therein, cannot be interfered with in any manner.

In the light of the observations made by the Division Bench in the above decision and having regard to the provision of Section 19 of the A.P. Co-operative Societies Act, 1964, I hold that the petitioner-Society is also

> eligible to participate in the public auction that may be conducted by the 2nd respondent – Assistant Director of Fisheries, Guntur, for grant of lease of fishery rights of Kakani Major Irrigation Tank. The writ petition is accordingly disposed of with a direction to the 2nd respondent – Assistant Director of Fisheries, Guntur to consider the claim of the petitioner – Society as well on par with the Societies registered under the A.P. Co-operative Societies Act, 1964 and take necessary further action in accordance with law."

Learned counsel for the appellant assailed the order under challenge mainly on the ground that while accepting the prayer made by respondent No.1, the learned Single Judge overlooked the pleadings contained in the affidavit filed on behalf of respondent No.4 (the appellant herein) and various documents including G.O.Ms.No.343 dated 10.4.1978 vide which preferential right has been given to the Fishermen Cooperative Societies in the matter of grant of lease for fishing in major as well as minor irrigation tanks.

In the context of the submission made by him, we asked the learned counsel to show the particular document to which attention of the learned Single Judge was drawn during the course of hearing and the same was not considered. In reply, learned counsel invited our attention to the grounds contained in the memorandum of appeal. However, we have not felt persuaded to rely on the grounds set out in the memorandum of appeal for the purpose of recording a finding that the order under challenge suffers from an error apparent or that the learned Single Judge omitted to consider the relevant documents. If the appellant has reason to believe that the learned Single Judge overlooked any document, which has bearing on the decision of the claim made by respondent No.1, or ignored the legal submissions made during the arguments, the only remedy available to it is to seek review of the order passed by the learned Single Judge by filing an application under Article 226 of the Constitution of India read with Order 47 Rule 1 of the Code of Civil Procedure.

Learned counsel for the appellant says that the application, if any filed by his client for review of the order under challenge is likely to be dismissed as barred by time. In this context, it is sufficient to observe that no period of limitation has been prescribed under the Limitation Act 1963 or any other Act for filing an application for review of an order passed under Article 226 of the Constitution of India.

With the above observations, the appeal is dismissed leaving the appellant free to file appropriate application for review of the order under challenge. However, it is made clear that the liberty given to the appellant shall not be construed as a direction of the Division Bench for entertaining the review application, if any, filed by the appellant and it will be for the learned Single Judge to independently consider whether any ground has been made out for review of the order under challenge.

As a sequel to the dismissal of the writ appeal, W.A.M.P.No.497 of 2006 is also dismissed.

G.S.SINGHVI, CJ

Dt.23/3/2006

G.BHAVANI PRASAD,J

msv/vtv/ARS